

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ZAG AMERICA, LLC,

Plaintiff,

v.

THE PARTNERSHIPS AND  
UNINCORPORATED ASSOCIATIONS  
IDENTIFIED ON SCHEDULE “A”,

Defendants.

Case No.: 1:20-cv-00013

Judge Robert W. Gettleman

Magistrate Judge Sidney I. Schenkier

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION FOR SERVICE OF  
PROCESS BY E-MAIL AND/OR ELECTRONIC PUBLICATION**

Plaintiff, ZAG AMERICA, LLC (“ZAG” or “Plaintiff”), submits this Memorandum in support of its Motion for Electronic Service of Process Pursuant to Fed. Civ. P. 4(f)(3). Plaintiff respectfully requests that this Court grant authorization for Zag America, LLC, to effectuate service of process by e-mail and/or electronic publication.

**TABLE OF AUTHORITIES**

**CASES**

*In re LDK Solar Secs. Litig.*, 2008 WL 2415186,\*2 (N.D. Cal. Jun. 12, 2008).....3

*In re Potash Antitrust Litig.*, 667 F. Supp. 2d 907, 930 (N.D. Ill. 2009) .....3

*Juniper Networks, Inc. v. Bahattab*, No. 1:07-cv-01771-PLF-AK, 2008 WL 250584, \*1-2, (D.D.C. Jan. 30, 2008).....2

*MacLean-Fogg Co. v. Ningbo Fastlink Equip. Co., Ltd.*, No. 1:08-cv-02593, 2008 WL 5100414, \*2 (N.D. Ill. Dec. 1, 2008).....2

*Nanya Tech. Corp. v. Fujitsu Ltd.*, No. 1:06-cv-00025, 2007 WL 269087, \*6 (D. Guam Jan. 26, 2007)....3

*Popular Enters., LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560, 563 (E.D. Tenn. 2004).....2, 3

*Rathmann Grp. v. Tanenbaum*, 889 F.2d 787, 789 (8th Cir. 1989).....4

*Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002).....2

**STATUTES**

Fed. R. Civ. P. 4(b).....4

Fed. R. Civ. P. 4(f)(3).....1, 2

Fed. R. Civ. P. 65(c).....4

**MEMORANDUM OF LAW**

Pursuant to Federal Rule of Civil Procedure 4(f)(3), Plaintiff requests this Court's authorization to serve process by electronically publishing a link to the Complaint, the Temporary Restraining Order, and other relevant documents on a website, and/or by sending an e-mail – which includes a link to said website – to the e-mail addresses identified in Exhibit 3 to the Murata Declaration, and any e-mail addresses provided for Defendants by third-parties. Fed. R. Civ. P. 4(f)(3). Plaintiff submits that providing notice via electronic publication and/or e-mail, along with any notice that Defendants receive from payment processors, is reasonably calculated under all circumstances to apprise Defendants of the pendency of the action and afford them the opportunity to present their objections.

Electronic service is further appropriate and necessary in this case because Defendants, on information and belief: (1) have provided false names and physical address information in the registrations of their Seller Stores, in order to conceal their identities and locations, and in an attempt to avoid liability for their unlawful conduct; and (2) rely primarily on electronic communications to communicate with their registrars and customers, demonstrating the reliability of this method of communication by which the registrants of the Seller Stores may be apprised of the pendency of this action. Finally, authorizing service of process solely via e-mail and/or electronic publication will benefit all Parties and the Court by ensuring that Defendants receive prompt notice of this matter, thus allowing this action to move forward expeditiously. Absent the ability to serve Defendants in this manner, Plaintiff will almost certainly be left without the ability to pursue a final judgment.

Federal Rule of Civil Procedure 4(f)(3) allows this Court to authorize service of process by any means not prohibited by international agreement. Fed. R. Civ. P. 4(f)(3). *Rio Props., Inc. v.*

*Rio Int'l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002). The Circuit Court in *Rio* held, “without hesitation,” that e-mail service of an online business defendant “was constitutionally acceptable.” *Id.* at 1017. The Court reached this conclusion, in part, because the defendant conducted its business over the Internet, used e-mail regularly in its business, and encouraged parties to contact it via e-mail. *Id.*

Similarly, a number of Courts, including the Northern District of Illinois, have held that alternative forms of service pursuant to Rule 4(f)(3), including e-mail service, are appropriate and may be the only means of effecting service of process “when faced with an international e-business scofflaw.” Fed. R. Civ. P. 4(f)(3). *Rio*, 284 F.3d at 1018; *see also*, *MacLean-Fogg Co. v. Ningbo Fastlink Equip. Co., Ltd.*, No. 1:08-cv-02593, 2008 WL 5100414, \*2 (N.D. Ill. Dec. 1, 2008) (holding e-mail and facsimile service appropriate); *Popular Enters., LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560, 563 (E.D. Tenn. 2004) (quoting *Rio*, 284 F.3d at 1018) (allowing e-mail service); *see also* *Juniper Networks, Inc. v. Bahattab*, No. 1:07-cv-01771-PLF-AK, 2008 WL 250584, \*1-2, (D.D.C. Jan. 30, 2008) (citing *Rio*, 284 F.3d at 1017-1018; other citations omitted) (holding that “in certain circumstances ... service of process via electronic mail ... is appropriate and may be authorized by the Court under Rule 4(f)(3) of the Federal Rules of Civil Procedure.”). Plaintiff submits that allowing service solely by e-mail and/or electronic publication in the present case is appropriate and comports with constitutional notions of due process, particularly given the decision by the registrants of the Seller Stores to conduct their Internet-based activities anonymously.

Furthermore, Rule 4 does not require that a party attempt service of process by other methods enumerated in Rule 4(f) before petitioning the court for alternative relief under Rule 4(f)(3). Fed. R. Civ. P. 4(f)(3). *Rio*, 284 F.3d at 1007, 1014-15. As the *Rio* Court explained, Rule 4(f) does not create a hierarchy of preferred methods of service of process. *Id.* at 1014. To the

contrary, the plain language of the Rule requires only that service be directed by the court and not be prohibited by international agreement. There are no other limitations or requirements. *Id.* Alternative service under Rule 4(f)(3) is neither a “last resort” nor “extraordinary relief,” but is rather one means among several by which an international defendant may be served. *Id.* As such, this Court may allow Plaintiff to serve Defendants via electronic publication and/or e-mail.

Moreover, Plaintiff is unable to determine the exact physical whereabouts or identities of the registrants of the Seller Stores due to their provision of false and incomplete street addresses. Plaintiff, upon information and belief, suspects the registrants of the Seller Stores to be residents of primarily Asian countries, which are signatories to The Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters (the “Convention”). Sullivan Decl. at ¶ 13. The Hague Convention does not preclude service by e-mail, nor is e-mail service expressly prohibited by any of the signatories as a method of service. *Id.* Additionally, according to Article 1 of The Hague Convention, the “convention shall not apply where the address of the person to be served with the document is not known.” *Id.* As such, United States District Courts, including in this District, routinely permit alternative service of process notwithstanding the applicability of The Hague Convention. See e.g., *In re Potash Antitrust Litig.*, 667 F. Supp. 2d 907, 930 (N.D. Ill. 2009) (“plaintiffs are not required to first attempt service through the Hague Convention.”); see also *In re LDK Solar Secs. Litig.*, 2008 WL 2415186,\*2 (N.D. Cal. Jun. 12, 2008) (authorizing alternative means of service on Chinese defendants without first attempting “potentially fruitless” service through the Hague Convention’s Chinese Central Authority); *Nanya Tech. Corp. v. Fujitsu Ltd.*, No. 1:06-cv-00025, 2007 WL 269087, \*6 (D. Guam Jan. 26, 2007) (Hague Convention, to which Japan is a signatory, did not prohibit e-mail service upon Japanese defendant); *Popular Enters., LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560, 562 (E.D. Tenn. 2004) (recognizing that, while “communication via e-mail and over the internet

is comparatively new, such communication has been zealously embraced within the business community.”). The proposed Temporary Restraining Order provides for issuance of a single original summons<sup>2</sup> in the name of all Defendants identified in the Complaint that shall apply to all Defendants in accordance with Federal Rule of Civil Procedure 4(b). As such, Plaintiff respectfully requests this Court’s permission to serve Defendants via e-mail and/or electronic publication.

DATED: February 3, 2020

Respectfully submitted,

/s/ Ann Marie Sullivan

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***ATTORNEYS FOR PLAINTIFF***

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<sup>2</sup> The Advisory Committee Notes to the 1993 Amendment to Rule 4(b) states, “If there are multiple defendants, the plaintiff may secure issuance of a summons for each defendant, or may serve copies of a single original bearing the names of multiple defendants if the addressee of the summons is effectively identified.” Fed. R. Civ. P. 4(b) advisory committee notes (1993).